

IN THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NEBRASKA

OGALLALA COMMUNITY HOSPITAL	)	
AND HEALTH FOUNDATION,	)	
	)	
Plaintiff,	)	7:04CV5012
	)	
v.	)	
	)	
VITZTUM COMMERCIAL FLOORING,	)	ORDER
INC., a Kansas corporation,	)	
et al.,	)	
	)	
Defendants.	)	
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VITZTUM COMMERCIAL FLOORING,	)	
INC., and AMCO INSURANCE	)	
COMPANY, an Iowa corporation,	)	
surety,	)	
	)	
Third-Party Plaintiffs,	)	
	)	
v.	)	
	)	
DEPENDABLE CHEMICAL CO., INC.,	)	
and MANKINI VINYL	)	
INSTALLATION,	)	
	)	
Third-Party Defendants.	)	
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This matter is before the Court concerning its review of the detailed privilege log and the documents therein listed submitted by third-party defendant Dependable Chemical Co., Inc. ("Dependable"). Because Dependable asserts the work-product privilege as a bar to discovery, they bear the initial burden of establishing a factual basis for their assertion. See *St. Paul Reinsurance Co. v. Commercial Fin. Corp.*, 197 F.R.D. 620, 627 (N.D. Iowa 2000). The party asserting the privilege meets this

burden by providing the reviewing court with a detailed privilege log and explanatory affidavit of counsel setting forth a factual basis for the privilege. *In re Grand Jury Subpoena Duces Tecum*, 112 F.3d 910, 925 (8th Cir. 1997). While Dependable has submitted the detailed privilege log, Dependable's counsel has not submitted his or her explanatory affidavit setting forth a factual basis for the privilege as required. Counsel's affidavit is required before the Court can complete its review of the alleged privileged documents. Accordingly,

IT IS ORDERED that third-party defendant Dependable Chemical Co., Inc., shall submit the required explanatory affidavit of counsel setting forth a factual basis for the privilege; said party shall have until July 7, 2006, to submit the requested affidavit.

DATED this 26th day of June, 2006.

BY THE COURT:

/s/ Lyle E. Strom

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LYLE E. STROM, Senior Judge  
United States District Court